

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ELMYRA CHAPMAN
Claimant

VS.

PLEASANT VALLEY MANOR, INC.
Respondent

AND

KANSAS HEALTH CARE ASSOCIATION WCIT
Insurance Carrier

Docket No. 208,611

ORDER

Claimant appealed the June 12, 1998, Award entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument by telephone conference on December 21, 1998.

APPEARANCES

Claimant appeared by and through her attorney, William L. Phalen of Pittsburg, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Kirby A. Vernon of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

Claimant injured her back while working for the respondent. After the injury, respondent provided claimant with modified employment under the respondent's rehabilitative modified duty program. Claimant became upset when respondent refused her request to take vacation while recovering from her work related injuries and while

participating in respondent's modified duty program. Claimant voluntarily resigned her employment with respondent on October 18, 1995.

After claimant quit her job, respondent continued to provide medical treatment for claimant's injuries until she was released by her treating physician with permanent work restrictions. Respondent contends, if claimant would have not voluntarily resigned her employment, it would have retained her as an employee in a job that would have accommodated her work restrictions.

The Administrative Law Judge limited claimant's permanent partial disability benefits to claimant's permanent functional impairment. The Administrative Law Judge found that claimant voluntarily resigned her employment with respondent and if she would not have resigned, the respondent would have retained her as an employee in an accommodated job within her permanent restrictions.

The claimant contends that her work-related physical injuries not only resulted in her not being able to work, but those injuries also aggravated her preexisting psychological condition that contributed to her inability to work. Therefore, claimant contends she is entitled to a much higher work disability or she is permanently and totally disabled.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds the Award should be affirmed.

The Appeals Board finds the Administrative Law Judge's findings and conclusions, as expressed in the Award, are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this Order. The Appeals Board hereby approves those findings and conclusions and adopts them as its own.

Specifically, the Appeals Board finds the testimony of the respondent's safety director, Peggy Stanley, is credible and establishes that if claimant had not voluntarily resigned her employment with respondent, she would have been retained while she was recovering from her injuries in the modified duty program. Thereafter, when claimant was released from medical treatment with permanent restrictions, the respondent would have placed claimant in a job that would have accommodated her permanent work restrictions. Where the respondent established that it would have accommodated an injured employee's permanent work restrictions had she not voluntarily quit her job, the Court of Appeals held the employee was not entitled to permanent partial disability compensation in excess of her functional impairment. See Lowmaster v. Modine Mfg. Co., 25 Kan. App. 2d 215, 962 P.2d 1100, *rev. denied* ____ Kan. ____ (1998).

Additionally, the Appeals Board finds the opinion of Theodore A. Moeller, Ph.D., and claimant's testimony are persuasive that claimant's psychological problems were neither

caused nor aggravated by her work-related injury. After Dr. Moeller interviewed claimant on two occasions and analyzed claimant's psychological test results, he concluded that claimant's psychological problems preexisted her accident and were neither caused nor exacerbated by her work-related injuries. On March 18, 1998, claimant testified she was not taking any medication for her psychological problems. Furthermore, she testified that the reason she could not work was because of her physical problems and had no relation to her psychological problems.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated June 12, 1998, should be, and the same is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Kirby A. Vernon, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director